

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Crim. No. 10-236(FSH)

v. :

OCTAVIANO CRUZ : REPORT & RECOMMENDATION

This matter having come before the Court by way of referral from the Hon. Faith S. Hochberg to conduct a proceeding pursuant to Fed. R. Crim. P. 11 and to issue a report and recommendation regarding the defendant's entry of a guilty plea; and the Court having considered the written consent by the defendant and defense counsel to have the proceeding before the Undersigned; and the Undersigned having conducted a proceeding pursuant to Fed. R. Crim. P. 11; and as more fully set forth and reflected in the transcript of proceedings dated April 5, 2010, the Court makes the following report:

1. The defendant consented to the entry of a guilty plea before a United States Magistrate Judge, subject to the defendant's ability to file any written objections to the findings and recommendations contained in this report and orally stated at the Rule 11 proceeding and subject to its adoption by the United States District Judge;
2. The defendant fully understood the oath and consequences of failing to tell the truth at the plea hearing;
3. The defendant fully understood that the defendant has a right to have this case presented to a grand jury;
4. The defendant fully understood the nature of the charges and the consequences of the guilty plea, including the maximum penalties that the defendant faces;
5. The defendant fully understood that while the United States Sentencing Guidelines are

not binding, they will be considered;

6. The defendant fully understood the right to plead "not guilty" and to be tried by a jury, with the assistance of counsel, and that the defendant would have the right to confront and cross-examine witnesses, call witnesses and compel the production of evidence if the defendant so chose, and to remain silent or testify, if the defendant so chose;
7. The defendant fully understood that if the guilty plea is accepted, then there would be no trial in this case;
8. The defendant was fully competent and capable of entering an informed guilty plea;
9. The defendant's waiver of the right to have this matter presented to the grand jury, the waiver of the right to file an appeal and to file a post-conviction challenge, and the plea were free, knowing, and voluntary; and
10. There is a factual basis to support the plea of guilty.

Based upon the foregoing, and based upon the transcript of the proceedings, it is on this 5th day of April, 2010, recommended to the United States District Judge that the defendant's plea of guilty be accepted and that a judgment of guilt to the Information be entered.

Respectfully,

s/Patty Shwartz
United States Magistrate Judge

NOTICE

**FAILURE TO FILE WRITTEN OBJECTIONS TO THE FINDINGS AND
RECOMMENDATIONS CONTAINED IN THE FOREGOING REPORT, WITHIN
FOURTEEN DAYS OF RECEIPT OF SAME, MAY BAR DE NOVO DETERMINATION
BY THE UNITED STATES DISTRICT JUDGE OF AN ISSUE COVERED HEREIN AND
SHALL BAR APPELLATE REVIEW OF SUCH FACTUAL FINDINGS AS MAY BE
ACCEPTED
OR ADOPTED BY THE UNITED STATES DISTRICT JUDGE.**